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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re DANIEL B. et al., Persons Coming Under the Juvenile Court Law.	B144882 (Los Angeles County Super. Ct. No. CK23038)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ELENA W., Defendant and Appellant.	

APPEALS from orders of the Superior Court of Los Angeles County. Leslie Flynn, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel, Patrick D. Goodman, and Pamela S. Landeros, Deputy County Counsel, for Plaintiff and Appellant.

Elena W. appeals from two orders of the juvenile court in dependency proceedings involving her sons, Daniel B., born in February 1994, and Charles B., born in June 1996. The first order, of August 18, 2000, denied appellant's petition under Welfare and Institutions Code section 388 to enlarge her visitation with the children.[1] The second order, rendered February 8, 2001, terminated appellant's parental rights with respect to the children, under section 366.26. We consolidated appellant's appeals from these orders. She contends that the court abused its discretion by summarily denying her modification petition, and that it erred in terminating parental rights because the case qualified for the exception to termination provided by section 366.26, subdivision (c)(1)(A). We affirm the orders.

FACTS

Respondent Los Angeles County Department of Children and Family Services (department) filed a petition under section 300 with respect to Daniel and Charles in June 1996, three days after Charles's birth. The petition alleged that the children were at risk because appellant's history of mental problems and current depression rendered her unable to care for them, and their respective fathers were imprisoned or of unknown whereabouts. Appellant had brought the infant Daniel with her to the hospital for Charles's delivery, and had been hostile and aggressive to staff during her stay. Appellant claimed to have been unaware of her pregnancy until a week before the delivery. She informed the department's social worker she had been prescribed antipsychotic and antidepressant medication, and appellant's parents further explained her long history of mental disorders.

At a detention hearing the same day, the court ordered Charles detained, with appellant allowed monitored visitation and reunification services. The court ordered

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[1] Undesignated section references are to the Welfare and Institutions Code. Subdivision (c)(1)(A) of section 366.26 is cited simply as subdivision (c)(1)(A).

Daniel released to appellant, provided that she pursue parenting classes and continue counseling and taking prescribed psychotropic medications. The court stayed this order pending a further detention hearing, which proceeded over the ensuing week. At the continued hearing, Zelpha Wallace, a licensed clinical social worker for the Los Angeles County Department of Mental Health, testified that she had seen appellant, with Daniel present, 30 times in 1994, and twice each in 1995 and 1996. Ms. Wallace worked with appellant's psychiatrist. Appellant had been referred around the time of Daniel's birth, with a diagnosis of major depression. She thereafter took various medications. Ms. Wallace had previously consulted the department after appellant informed her she had been breaking furniture at home. However, Ms. Wallace did not believe appellant posed a danger to Daniel.

A department social worker testified that Daniel had previously had a burn on his nose; appellant had explained that he had grabbed a lit cigarette from her and tried to put it in his mouth. Appellant had also told the worker that she sometimes dug her fingernails into Daniel, for no reason. The present children's social worker recounted that appellant had stated she had been taking Prozac and Paxil, but had discontinued them because she thought they were damaging her liver.

At the conclusion of the hearing, on June 26, 1996, the court found that Daniel came within section 300, subdivisions (b) and (g), but there was not a danger sufficient to warrant removing him appellant's custody. The court conditioned Daniel's return, however, on appellant's attending a psychiatric evaluation, complying with any medication prescription, ensuring Daniel appeared at medical appointments, and cooperating with the department.

Dr. Michelle Sager, a psychiatrist at the county mental health department, reported and opined that appellant was suffering not from a psychotic disorder but a borderline personality disorder, although she had been diagnosed with major depression and schizoaffective disorder, and stress might produce "'miscropsychotic episodes'" in her.

On August 17, 1996, appellant was arrested after battering two people at a donut shop, then running into traffic and lying down in the street, after handing Daniel to a police officer and saying, "I can't take it anymore" -- and also punching the officer. With appellant in custody, the juvenile court required Daniel detained. He was placed in the same foster home as Charles. The court also granted the department's petition under section 385 to restrict appellant's visitation with both children.

The adjudication hearing convened on October 29, 1996. Dr. Sager testified that appellant had a history of several psychiatric hospitalizations. She had suffered from major depression and bulimia, and her primary diagnosis involved paranoid and borderline personality disorders. The doctor had prescribed medicine, but she did not believe appellant was taking it. Appellant was hypersensitive to criticism and easily angered. She had been charged with child endangerment from the street episode, but the charges had been dropped. Expressing its tentative view that insufficient risk appeared from appellant's illness to require Daniel's removal, the court, over objection of Daniel's counsel, ordered that appellant have both monitored visitation and a two-hour per week unmonitored visit, in a public place.

For November 6, 1996, the department filed a petition under section 385 to eliminate the unmonitored visitation. The petition alleged that appellant had brought her boyfriend to such a visit, had become angry and slapped him, and had cursed at the foster parents.[2] The matter was continued to November 15, previously set for resumption of the adjudication. The department filed an amended section 300 petition, adding counts alleging that Daniel had witnessed appellant's "irrational and endangering behaviors" in the donut shop and visitation incidents.

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[2] The department subsequently reported that appellant had proceeded to disrobe and sit down in the parking lot of the McDonald's where the visit had occurred.

Before the next hearing, the department reported that appellant had been arrested for two further batteries. The first involved her kicking a newsstand employee with whom her male companion had been talking. In the second, she had thrown a cup of water on a fire captain who had been assisting her after a call to paramedics. Appellant told the social worker that for some time she had neither been seeing Dr. Sager nor taking the medicine she prescribed, because appellant did not need it.

Appellant confirmed this at the continued adjudication and disposition hearing, on February 11, 1997. She recounted her previous hospitalizations, including one after she had jumped out of a window, and others for stress. Appellant stated she had been "feeling deformed by the medication" Dr. Sager prescribed. She also testified about the various assaults, explaining that she generally had responded to individuals who were threatening or denouncing her. Appellant stated she had recently begun receiving mental health counseling in West Hollywood. She acknowledged she had never had custody of Charles.

The court sustained all counts of the petition, after striking certain allegations. The court found especially troubling the incident that culminated in appellant's lying down in the street, especially in view of her testimony that she had focused on herself rather than Daniel. To assist it with disposition the court ordered, under Evidence Code section 730, that appellant be examined by Dr. Michael Ward, a psychologist, to advise what therapy she required to be able to care for the children.

Dr. Ward's April 28, 1997 report stated that before her marriage to Daniel's father appellant had pursued various employments involving child care. She did not appreciate the inappropriateness of her behavior in the various batteries, the public disrobing, and her walk into traffic. Dr. Ward could not make a differential diagnosis, but he opined that "there is absolutely no doubt that [appellant] has some very significant psychological and personality type problems, and may well have an underlying psychiatric disorder." She failed, moreover, "to see any connection between her inappropriate and/or aggressive behavior and her ability to care for children." Having observed appellant and the

children, Dr. Ward wrote that there was "a good bond" between her and Daniel, a lesser one with Charles. Whether appellant required medication would require evaluation through long-term therapy, at least weekly, which she required. At least, appellant appeared to have a "very severe underlying personality disorder . . . ." She could not now be entrusted with care and custody of the children. "If she has not attended a parenting class to date, she certainly should do so."

In May 1997, a former therapist of appellant's informed the department that he had discontinued treating her because she had become aggressive and hostile at the therapy center. The psychologist had feared for the safety of himself, colleagues, and department social workers. Appellant recently had become loud and hostile at a department office on a visit. On June 9, 1997, she was arrested for attacking her male companion, Tomas. He informed the department she had smashed furniture (including five televisions over a year) and scratched herself, and that she often went onto the street naked. He added that appellant would not keep herself clean unless he told her to. In July and August, appellant again was arrested for attacking Tomas.

On October 15, 1997, the court declared the children dependents, and found that substantial danger warranted removing them from appellant's custody. Family reunification services were ordered, and appellant was directed to pursue parenting classes, individual mental health counseling and anger management, and to comply with any prescriptions by a psychiatrist. A hearing under section 366.22 was set for April 15, 1998.[3]

On that date, the court continued for contest both the permanency planning hearing and an adjudication with respect to a new baby, Angie, whom appellant had recently had with Tomas. Angie had been detained and placed with Daniel and Charles.[4]

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[3] Appellant appealed from these orders. We affirmed them in October 1988.

[4] Angie's status is not a subject of this appeal.

The court ordered that the department evaluate Daniel's paternal grandmother for possible placement.

The section 366.22 hearing was continued several more times, because of court congestion, the absence of certain parties and witnesses, and a request by Daniel's father to change counsel. During the intervening proceedings, the court twice denied appellant's requests for unmonitored visitation, while leaving discretion to liberalize visitation in the department.

The department rendered reports for the various scheduled hearing dates. In the reports, the department recommended that a hearing under section 366.26 be set, with a view toward adoption. Appellant had failed to pursue the parenting classes required by the case plan, despite the department's referrals and the opinion of appellant's therapist, Zephia Wallace, that she needed them. (Appellant did attend one class, on October 26, 1998, but then requested a change of schedule.) Appellant continued to treat with Ms. Wallace, about weekly, and appeared to her calmer and cooperative. Appellant's psychiatrist, Victoria Hendrick, reported great progress, writing that appellant did not present any symptoms requiring psychiatric treatment.

In April 1998, the department reported that appellant had missed some of her visits with the children and had arranged for the twice-weekly visits to be consolidated into a single one. When appellant cancelled visits on short notice, Daniel became upset. He appeared very bonded to appellant, Charles less so. The children also had bonded with their foster mother, but the foster parents, being of greater age, did not consider themselves appropriate for adoption. The department had contacted Daniel's paternal grandmother, a single woman of limited means, residing in Ohio. She expressed a desire for whatever would be best for Daniel, whether it be to assume custody or for him to remain in foster care with appellant visiting.

In August 1998, the department reported that in July appellant had become angry and yelled at the foster mother, after misperceiving that Daniel had called her "mom." The social worker expressed concerns about appellant's anger management. A

psychological evaluation of Daniel in July found him to be of high average intelligence, but suffering from attention deficit hyperactivity disorder (ADHD) and presenting uncooperative and bullying tendencies. Daniel began counseling, and his therapist described him as nervous, irritable, overreactive and aggressive. The department reported on October 29, 1998 that the foster mother had recently found Daniel bad tempered, jealous, aggressive, and without guilt. He treated Charles roughly.

The department's reports for November 1998 and April 1999 recited that appellant had visited the children but had missed several dates. She had become very angry and had yelled for about 40 minutes when both the foster mother and a foster agency social worker came to monitor a visit. That social worker reported that appellant had made some progress in focusing on the children's behavior and setting limits, but she still had trouble when told what to do. Appellant continued to demonstrate difficulty managing all three of her children simultaneously, especially when Daniel became aggressive and Charles mimicked his behavior.

Daniel's therapist had referred him to a psychiatrist, who had prescribed Ritalin. The therapist opined that a higher dose might become necessary. Charles was progressing well, and spoke in complete if ungrammatical sentences.

The permanency planning hearing ultimately commenced on May 27, 1999, and continued on June 3 and 10. Patricia Levy, the department social worker assigned to the case for three years, testified that appellant had been nearly in compliance with the therapy requirements of her case plan. She had not, however, complied with the requirement of attending parenting classes. Although Ms. Levy had spoken to her about such classes and provided referrals, appellant had stated that her therapy visits made it difficult to find time for them. As for the class that she had attended once, appellant had last told Ms. Levy that she couldn't decide which day to subscribe for.

Appellant had recently been more consistent in her visitation. Ms. Levy had not liberalized the visits (from two hours per week, monitored), because appellant displayed difficulty focusing on more than one child at a time, and was frequently unaware of what

the others were doing. She had difficulty controlling the boys, and did not perceive when they were fighting. Ms. Levy felt that it would not be safe for appellant to have the children on her own, and she could not recommend a 60-day visit. Appellant's parenting problem involved her tendency to become overwhelmed when confronted with several things at once. She had begun to make progress with her therapy, and her anger management had improved, but it remained an issue.[5]

Appellant testified in her own behalf. She stated that she hadn't completed a parenting class because she had focused on her counseling. The one class she had attended had been too far from her home. She occupied herself with counseling, visitation, and "[b]asic survival stuff," such as food, walking, shopping, public transportation. Although Ms. Levy had told her it was important to attend parenting classes, appellant was not convinced of that, as "I've never been to a parenting class, so how am I supposed to know, you know." Asked whether she felt ready to assume custody, appellant first replied, "Um, well, yeah. I would – maybe. I mean, I was – yeah, I imagine." She later responded to the same question, "Um, yeah, I suppose." Appellant desired weekend visits at least, and she was willing to receive the children on a staggered basis.

Both the department and the children's attorney urged termination of reunification services. The court agreed. It noted that appellant had not pursued parenting classes, although they had been recommended by various mental health professionals. The court opined that if adding such classes to her schedule was too difficult for appellant, returning the children to her would be irresponsible. Such return would pose a substantial risk of detriment. Although appellant had substantially complied with the

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[5] At the end of Ms. Levy's testimony, the court approved a request by the foster parents to take the children on a one-month vacation trip. Appellant would have additional, compensatory visits.

case plan, she lacked the insight and abilities necessary for parenting. The court further found that the department had provided appellant reasonable services. A hearing under section 366.26 was set, for October 7, 1999.

The department's initial report for the hearing recited that Daniel was developing socially in school. The Ritalin appeared to be assisting him, and he responded well to control by his foster mother, albeit continuing to engage in aggressive outbursts when frustrated, including during appellant's visits. Appellant visited consistently, and had made improvement in controlling Daniel, who continued in therapy. Charles required an assessment for speech delays; otherwise he was developing appropriately, and acted stable, energetic, social, and affectionate.

After more than a year, both boys had developed a close, loving bond with their foster mother and her family. She and her husband wished to adopt them. The prospective parents were in their 60's, and had several adult children, including an adopted daughter. The family was a close one. The department assessed Daniel and Charles as adoptable, and recommended termination of parental rights and adoption.

The court on October 7, 1999 continued the hearing to February 3, 2000, both for contest and to afford notice to Charles's father. The department's report for the continued date stated that the children remained bonded to the foster mother, and appellant continued to visit, weekly. Both boys were developing in an age-appropriate manner; Daniel's kindergarten teacher had reported a decrease in his aggressive outbursts, something the department attributed to school attendance, consistent parenting by the caregiver, and medication. Daniel continued with therapy and psychiatric visits. A home study of the caregiver had not been completed, but she attended to the children's needs and also had received appellant -- to whose visits she brought the children -- at home.

On February 3, 2000, and again on March 3 and 30, the section 366.26 hearing was continued pending appellant's writ proceeding under rule 39.1B, California Rules of Court. The department was directed to provide a supplemental report on appellant's

visitation and progress, and the children's status. The department reported that both Daniel and Charles continued to progress, behaviorally and otherwise, with Charles being favorably affected by preschool. The foster mother had received speech exercises for him. The boys had now been with the foster family for over two years.

Appellant had visited fairly regularly, missing three visits in April and early May. The monitor, a social worker from the foster family agency, stated that appellant displayed great affection for her sons, but that the foster mother reported that they often were angry and frustrated following contact with her. Appellant "continue[d] to demonstrate erratic and aggressive behavior," screaming angrily at the departmental social worker on the telephone. The department concluded that notwithstanding her regular visitation, appellant was "unable to sustain the mental stability required to provide full-time care for children . . . ." The department recommended termination of parental rights.

The hearing again was continued several times. On August 17, 2000, the court continued it once more, in part to consider a petition under section 388 to modify the order for a section 366.26 hearing, which appellant had recently presented. The petition, denial of which is a subject of this appeal, alleged as changed circumstances that appellant had completed the case plan and continued to pursue counseling with Ms. Wallace and care by a psychiatrist, so that increased visitation and return of the boys was in their best interest. Appellant requested unmonitored visits with each child and weekend visits, "leading to possible placement with [appellant]." Appellant attached a certificate of completion of a 100-hour parenting course, awarded in September 1999, and a handwritten letter to her attorney by appellant's current psychiatrist at the county department of mental health, stating that appellant had been a client since 1993, was cooperative and compliant in treatment, and maintained a positive relationship with her counselor (Ms. Wallace) and the psychiatrist.

On August 18, 2000, the court denied the petition without a further hearing. The printed notice of ruling stated that the petition had been denied "on the ground that it does not appear that the child(ren) may be promoted by the proposed change of order."

The department's report for November 2, 2000 stated that Daniel's counselor had reported Daniel was making great progress, working on managing his ADHD symptoms. His medication had been changed to a different one. He was attached to his foster family, as was Charles, according to the foster family agency. They provided Charles "a great deal of love, structure, and care." Charles was attending a Head Start program, being eligible by virtue of his need for speech therapy. Appellant had missed four consecutive visits in August and September. According to the foster agency worker, appellant demonstrated love and care for the children, but needed to develop an ability to set limits, for their own safety. The report concluded that appellant continued to struggle with her mental health issues, and was unable to sustain the stability required to provide full-time care for the children, especially given their need for specialized interventions and consistent structure. The department again recommended termination of parental rights.

Several further continuances followed. On November 22, 2000, the foster care social worker reported that, during a visit with the children the day before, appellant had become extremely agitated and verbally hostile. In a telephone conversation about the episode the following day, appellant began yelling obscenities. Visitation thereafter was conducted at a department office, monitored by the departmental social worker.

On December 21, 2000, the section 366.26 hearing commenced, together with a section 366.22 hearing with respect to Angie. Called by appellant, Deborah Silver, the departmental social worker on the case since April 2000, opined that based on her observation of visitation, she had serious concerns about appellant's ability to control the boys, monitor their behavior, and parent them effectively. She considered Daniel and Charles adoptable. Daniel had enjoyed his visits with appellant. But during the month of missed visits, in August and September, neither he nor Charles had expressed upset, nor had their behavior deteriorated. Appellant had become agitated at the worker, in front of

the children, as recently as the last visit, during the pendency of the hearing.[6] At the observed visits, the children had generally been "out of control," and appellant engaged with one at a time. In Ms. Silver's opinion, appellant was not capable of providing the structure necessary to manage Daniel's ADHD, whereas the foster parents were doing "a remarkable job" in taking care of Charles's needs with respect to his speech delays.

Called to testify, Daniel stated he would like more visits, and would be sad if they couldn't continue. But he wished to remain living with the foster parents. Appellant testified that she did not feel overwhelmed during the visits with her children, and that the visits afforded her "some kind of a relationship" with them. The boys called her "mommy" at the visits. Appellant stated she divided her time there among the three children. But she also stated that if a monitor were present, appellant could properly address only one of the children, with the monitor interacting with one or more of the others.

Appellant wanted the children returned to her. She believed the foster parents to be good caretakers of the children, but for them to adopt would not be best for the boys, because appellant was still visiting and interested in being with them. Appellant had not inquired further about Charles's speech delays and the programs he was pursuing for them, because she did not perceive a speech problem, and she considered the matter a professional one.[7]

The department argued in favor of termination of parental rights. Although conceding that appellant had regularly visited Daniel and Charles, the department urged

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[6] This apparently stemmed from the worker's failure to say hello to appellant at the beginning of the visit; appellant perceived that the worker's attention was focused on the foster mother.

[7] Appellant had given her counselor only a limited release, so that information about appellant's medication (if any) had not been provided.

that her relationship with them did not pose the type of benefit required for the exception to termination under subdivision (c)(1)(A), as analyzed in various appellate decisions. Daniel's and Charles's attorneys concurred, pointing out as well that a home study for the prospective adoptive parents had been completed, and they were providing the boys love and authority.

The court found that Daniel and Charles were likely to be adopted, and that their return to appellant would create a risk of detriment. The remaining question was whether parental rights should not be terminated by reason of subdivision (c)(1)(A). The court found that that exception did not apply. Appellant, who suffered from a mental condition, had failed to identify, appreciate, or respond to the boys' respective attention deficit and speech disorders, and during visitation she relied on the monitors for assistance. The court concluded that there did not exist a relationship whose continuation would be beneficial to the children. Indeed, appellant's behavior at visits often appeared to impact on them negatively. The lack of prospective benefit also appeared from appellant's often virtually unintelligible testimony at the hearing. Moreover, although Daniel had testified that he liked the visits, he also had declared that he wanted to remain with his foster family. The court accordingly terminated appellant's parental rights with respect to Daniel and Charles.

DISCUSSION

1. Appellant's Petition Under Section 388 for Expanded Visitation.

Appellant first challenges the court's summary denial of her August 2000 petition, under section 388, to modify the order setting a section 366.26 hearing and grant her unmonitored visits with Daniel and Charles, including at least one weekend visit.[8] Section 388 permits modification of prior orders upon a petition showing changed circumstances or new evidence that require the change. As it read in 2000, section 388

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[8] The petition referred to "weekend visit" in the singular.

further provided that "If it appears that the best interests of the child may be promoted by the proposed change of order . . . the court shall order that a hearing be held . . . ." However, "If the petition fails to state a change of circumstance or new evidence that might require a change of order . . . the court may deny the application ex parte." (Cal. Rules of Court, rule 1432(b).) We review such a summary denial for abuse of discretion. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

There was no such abuse of discretion here. The facts the petition alleged as warranting the additional, unmonitored visitation were that (1) appellant continued to pursue therapy with Zelpha Wallace and a coordinate psychiatrist, and (2) appellant had completed a parenting class, thus allegedly complying with the case plan. The first circumstance was neither new nor changed: appellant had been undergoing this therapy throughout the case. The accompanying brief letter from the psychiatrist, to the effect that appellant had been cooperative and positive, also did not state a changed circumstance, much less one indicating that liberalized visitation was appropriate. The documentation did not show a change in appellant's practical abilities for visitation.

The second fact, that appellant had at last undertaken and completed a parenting program, also was insufficient to require that she be allowed unmonitored and weekend visitation. Although it reflected further fulfillment of the case plan, this bare fact did not bespeak or show that appellant had overcome the deficiencies in insight and skills which the court had found when ruling under section 366.22. Indeed, appellant's shortcomings in controlling the children, and her violent temper, had manifested themselves again since the parenting classes. Simple completion of these classes did not show prima facie that either the requested modification or a hearing would be in the children's best interests. (See § 388; Cal. Rules of Court, rule 1432(c); *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Anthony W., supra,* 87 Cal.App.4th 246, 250.) The petition's conclusory allegation to this effect was insufficient. (*Ibid.*)

Appellant posits as similar to hers certain cases involving reversals of summary section 388 denials, but they actually are different. In *In re Jeremy W.* (1992) 3

Cal.App.4th 1407, the petition was accompanied by three declarations, in one of which the mother's doctor opined that she was presently able to provide suitable care for her son. Likewise, in *In re Hashem H*. (1996) 45 Cal.App.4th 1791, the petition included a letter from the physician discussing the substance of the mother's therapy, opining that she could adequately supervise her son full-time, and recommending he be returned to her custody. And in *In re Aljamie D.* (2000) 84 Cal.App.4th 424, the petition alleged several concrete changes in the mother's situation, such as completion of a variety of educational programs, including domestic violence management, as well as consistent visitation and strong bonding with the children. Moreover, the petition showed that the children's first choice was to live with the mother.

Appellant's section 388 petition alleged neither sufficient changed circumstances nor evidence that a change of order would be in the children's best interests. (Cal. Rules of Court, rule 1432(b), (c).) The court did not abuse its discretion in denying the petition without conducting a hearing on it.

2. Termination of Parental Rights in Light of Subdivision (c)(1)(A).

Under section 366.26, subdivision (c), the court must terminate parental rights if it finds that a child will likely be adopted, and the court has terminated reunification services and removed the child from the parent's custody, unless the court also finds a compelling reason for determining that termination of rights would be detrimental to the child, due to one or more of four circumstances, set forth in subdivisions (c)(1)(A)-(D).[9] Appellant contends that substantial evidence did not support the court's adverse finding with respect to subdivision (c)(1)(A), which provides an exception to termination if "The parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We do not agree.

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[9] A fifth such reason has been added, in subdivision (c)(1)(E), effective this year.

With respect to the first prong of subdivision (c)(1)(A), regular visitation and contact, the trial court did not make a finding adverse to appellant, and its omission to do so suggests that it agreed with the department that appellant had maintained such contact. The evidence would support a finding to that effect. However, the court expressly did find adversely on the question whether continuing the relationship would benefit the children. Appellant's challenge to this finding is unavailing.

Appellant disputes the prevailing interpretation of the "benefit" element of subdivision (c)(1)(A), as originally expounded in *In re Autumn H.* (1994) 27 Cal.App.4th 567, to the effect that "the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*Id.* at p. 575; accord, e.g., *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534; *In re Teneka W.* (1995) 37 Cal.App.4th 721, 729.) Instead, appellant argues, this court (and presumably the trial court) should find the element of "benefit" to be present if continuation of the parent-child relationship is in the child's "best interest."

Appellant's proposed test, however, is contradicted by the text of section 366.26. Subdivision (c)(4) of the statute refers to and describes a finding that termination of parental rights is not in the best interests of the child by reference to a determination that one of the conditions in subdivision (c)(1)(A)-(E) applies. Thus, in the context of this statutory scheme, "best interests" is a conclusion that flows from application of subdivision (c)(1)(A) and its companion subsections, not a defining qualification for their operation. (See *In re Jessie G.* (1997) 58 Cal.App.4th 1, 8 [section 366.26, subdivision (c)(1) does not include a best interests exception to adoption; the specific statutory exceptions operate to assure the child's best interests].) In contrast, the interpretation in *In re Autumn H.*, *supra*, 27 Cal.App.4th 567, has withstood extensive judicial scrutiny, and the Legislature has not disturbed it.

In any event, the trial court's determination as to benefit from continuing the relationship is amply supported, regardless of the precise test applied. Appellant's

present relationship with her sons comprised visitation in which she could not properly control their behavior and often engaged in hostile confrontations with social workers in the children's presence. Appellant did not truly recognize or involve herself with the disabilities Daniel and Charles were confronting. Although she bore and displayed love for the boys, they did not suffer from her absence from visitation, and Daniel expressly desired to remain with his prospective parents. The court was justified in finding that continuation of the relationship would not benefit the children, or be in their best interests, as contrasted with the benefits of an adoptive family.

DISPOSITION

The orders under review are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

COOPER, J.*

We concur:

NOTT, Acting P.J.

DOI TODD, J.

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* Presiding Justice of the Court of Appeal, Second Appellate District, Division Eight, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.